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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
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BY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

United States, in its own right
and on behalf of the Lummi
Nation

Plaintiff,

v.

State of Washington, Department of
Ecology; Georgia Manor Water Assoc.;
Gooseberry Point Community and Water
Association; Leeward-Northgate Water
Association; Abbott William &
Marilyn; Almanza Nicci R.; Andrew
Robert J.; Autry Nicole; Axtell Steven
S.; Bailey Raymond E. & Elizabeth D.;
Barry Richard And Dorothy D. Murphy;
Bartel Dale & Angie; Bell Thomas E.
& Beverly J.; Berghoff Larry J. &
Patricia A. Marek; Bernard M Fernandez
And Lesli M Higginson Jt; Berry John W.
& Marcia C.; Berry Marcia C.; Bezona
Bob D.; Bezona Michael G. & D. Kim;
Bezona Robert D.; Blake Sigrid J.;
Bonsen Ronald B.; Boyd Gerald R.;
Boyd-Phyllis Douglas J. and Terry-
Elizabeth Mackay; Bransitter John R.;
Brenzman David L. & Shirley L.; Brown
Hazel A.; Bruce K. & John G. Mallory
And Victoria L. Rizzardo; Buchea Brian
M. & Dolores J.; Buckner Gregory D.
& Steven G.; Burgin James H.; Burgin

Civil Action

NO
C01-0047Z

UNITED STATES' COMPLAINT

1 Peggy A.; Burleigh Kerrison F. &)
 Beverly J.; Buss Donald J. & Concetta)
 2 J.; Button Dale R. & Nancy G.; Cabello)
 Michael S. & Toni M.; Cadwallader)
 3 Verna F.; Carr Myron E. & Marilyn J.;)
 Cecil Y. Conrad And Earl W. Swartz Jt;)
 4 Charles W. & Lorraine D. Emley Jt;)
 Cole Harold; Colleen & Kevin Berg And)
 5 Karen Snell Jt; Corning William H.;)
 Costello Robert F. & Edith L.;)
 6 Critchlow Mark G. & Diana M.; Curtis)
 Donald H. & Lucille L.; Daniel Perlman)
 7 J.; Daniel & Edda Knorr Jt; Davis)
 Dorothy M. L.; Davis Trust Edward M.)
 8 Davis & Marie A. H. Davis Tr; Dawson)
 Richard And Marlene; Deitz Gary &)
 9 Sally Strickler-Deitz; Del Castillo)
 Humberto & Moreno; Delores Childress)
 10 Tr; Pederson Kids Revocable Trust;)
 Demmert Larry E. Jr & Brenda K.; Dixon)
 11 J. C. & Florence M.; Doan Albert G. &)
 Patti O.; Doorenbos Craig Abrahamson)
 12 And Patricia A.; Dorothy D. Drumheller)
 And Nelly D. Cunningham Jt (2183 Lummi)
 13 Shore Rd); Dorothy D. Drumheller And)
 Nelly D. Cunningham Jt (2187 Lummi)
 14 Shore Rd); Dorothy D. Drumheller And)
 Nelly D. Cunningham Jt (2191 Lummi)
 15 Shore Rd); Dwyer Timothy J.; Earl)
 Robert N. & Roberta Wade-Earl; Edson)
 16 Walter A.; Edwards Francis & Irene;)
 Ek Roy E.; Elsbree Kevin J.; Elsbree)
 17 Kevin J. & Kathleen A.; Epstein Joel)
 & Geena; Everett L. Madsen Tr; Fadden)
 18 Rodney & Lea Ann; Fischer Fredrick W.)
 & Linda M.; Friday John W.; Gallo)
 19 Robert & Lucia; Gary L. Smith &)
 Frederick R. Eckes Jt; George Richard)
 20 C. & Lana L.; Gregor Alton J.;)
 Gustafson Larry A. & Robyn G.; Hahney)
 21 Thomas M. & Cheryl; Hamilton William &)
 Helen; Hampton Raymond O. & Doreen S.;)
 22 Harriman Larry G. & Gloria A.; Harriman)
 Larry G. & Gloria A.; Harris James T.)
 23 & Kerry L.; Harwood Jane; Heintz)
 Michael R. & Kristine A.; Hewko Sally)
 24 J.; Hillis Lester C. & Shirley J.;)
 Hinshaw Richard W. & Margaret A.;)
 25 Hoffmann John G. & Suzanne; Houser Rex)
 E. & Eleanore C.; Hovander Steve H.;)
 26 Howell William B. & Judy E.; Hubbard)
 Bradley C. & Sandra J.; Hubbard Victor)
 27
 28

1 & Diane Brainard; Huizenga Robert;)
 Hunter Lyle S.; Inge Robert P. & Steven)
 2 W.; Janet C. Ott And Joanne J. Kotjan)
 Jt; Jindrich Ervin J. & Denise L.;)
 3 Johnson Michael D.; Jones Debra J.;)
 Jones Jean M.; Josephson Richard W. &)
 4 Marlene L.; Kamrar Elizabeth And Joanne)
 Barry And Alice Parmentola And Linda)
 5 Frazier; Kandiko Robert A. & Karen R.)
 Neubauer; Karl F. & Ellen R. Kern)
 6 Revocable Trust; Kelley James C. & C.;)
 Gail; King Richard L. & Linda L.;)
 7 Knight Terry; Knowles William D. &)
 Anita J.; Kosel Horst J. & Carolla;)
 8 Krista Hunter & Noah L. Heartwell;)
 Kuljis Carol A.; Kurtz Michale A.;)
 9 Larsen Fred C. & Beverly B.; Larsen)
 Christine M.; Leslie O. Crosby)
 10 Qualified; Personal Residence Trust I;)
 Lockwood Donald B. And Yvonne M.)
 11 Mitchell; Mackiewicz Mark A.; Martens)
 Terry & Ramona D.; Martin Albert E.)
 12 & Deirdre Delaplace; Martinsen Wesley)
 D.; Martinsen Wesley D.; Mccord Chuck)
 13 R. & Roberta L.; Mccord Chuck R. &)
 Roberta L.; Mccourt William P. &)
 14 Judith A.; Mcrae Cynthia B.; Melcher)
 Michael T. & Terri J.; Merhaut Robert)
 15 & Rebecca; Miller Stephen A. & Joan M.;)
 Milner Roberta A.; Milton B. & Beulah)
 16 E. Tanggard Rev Trust/Tr; Mitchell)
 Patricia M.; Moffett Kathryn A.; Moore)
 17 Gerald; Morse Edna; Mount Larry C.;)
 Munson John & Kathrine; Nesbit Sid H.)
 18 & Leslie A.; Nesbitt Sidney H. & Leslie)
 A.; Nielsen Joyce A.; Nielsen Joyce A.)
 19 Nolte Richard R.; Nolte Iii Frederick)
 W.; Nolte, Jr Frederick W.; North)
 20 Charles S. & Lorraine E.; Oliver Brian)
 N. M.; Olsen Larry R.; Osvaldik Peter;)
 21 Pasinski Jr Eugene J.; Peggy Manthey)
 Credit Shelter Trust/Caryn L Sinnes Tr;))
 22 Peterson Jean And Lois Robbins And)
 Lorraine Wagness; Peterson Donald J.;)
 23 Praetzel Michael; Pruss John J. &)
 Sylvia J.; Randel John; Randmel Brett)
 24 L.; Reimer Irene C. And Ulrich Haag;)
 Richardson Thomas F. & Kathleen L.;)
 25 Riedinger Mary; Ring Michael L.;)
 Robbins Carolyn M. & William L.)
 26 Freeman; Robertson John H. & Linda)
 K. Tibbot; Rose Bruno And Peter)
 27
 28

1 Tudisco Jt; Sandberg Joanne;)
 Schleitweiler Richard & Debra J.;)
 2 Schnobrich William C. & Sally R.;)
 Severson Richard H.; Shahan Valerie J.;)
 3 Shantz Wayne R. & Diane L.;)
 Jones-Shantz; Shaw Janine & Laurel And)
 4 Constance McMullen; Shelton L. Jev;)
 Sherman William F.; Shields Cecil C.;)
 5 Smith Monty M. & Craig M.; Smith)
 Michael G. & April M. Sakahara; Snead)
 6 David E. & Ruth L.; Spanjer Michael;)
 Spring Jerome L. & Marisela R.;)
 7 Starkenburg Sherman; Stevens James C.;)
 Sunset Water Assn; Taylor Marc R.;)
 8 Taylor Terry N. And Patricia A. Gibson;)
 Teel Donald E. And Marie Y. Egawa;)
 9 Temple James K.; Thomas Mike A. &)
 Terri A.; Thomas Debbie A.; Thrall)
 10 Thomas K.; Toraason David G. & Beth I.;)
 Tracy James D. & Leana G.; Trecker)
 11 Matreck C.; Troy Leland; Tze Wah Jun;)
 Van Boven John H. & Gladys L.; Vander)
 12 Yacht Lyle M. & Peggy C.; Vanderpol)
 Steve R. & Carol A.; Paul & Mary)
 13 Enfield; Vann W. & Lois A. Smith;)
 Wales Richard E. & Alice N.; Walker)
 14 Wayne W. & Kimberlee S.; Weber Donald)
 & Kathleen K.; Weidkamp Rich & Daleen)
 15 And Fred Knutzen And John & Ilda)
 Tamman; Whiteley John W.; Whitney)
 16 Clifford W. & Lillian G.; Whitsell)
 Walter M.; Wilfred E. & V.)
 17 Gunderson Jt; Wormald Martin L. And)
 Lori Takeoka; Wormald Martin L. And)
 18 Lori Takeoka; Wright Virginia R.;)
 Yasuoka Tom & June; Yu Chong K. &)
 19 Young C.; Zephyr Investments Inc;)
 1659 Holdings Ltd.,)
 20)
 21 Defendants.)

22 Comes now the United States in its own right and for the
 23 benefit of the Lummi Nation and its members, at the request of the
 24 Secretary of the Interior and pursuant to the authority of the
 25 Attorney General, complains and alleges as follows:

26 I. Nature of the Action

27
 28 U.S. Department of Justice
 Charles E. O'Connell, Jr.
 601 Pennsylvania Ave., N.W.
 Washington, DC 20004
 (202) 305-0261

1 1. This is an action to have this Court judicially
2 recognize, declare, quantify and decree to the United States in
3 trust for the Lummi Nation, that Nation's superior right to water
4 underlying the Lummi Peninsula, which is wholly within the Lummi
5 Indian Reservation. The United States on behalf of the Lummi Nation
6 also claims prior and paramount right to the groundwater underlying
7 the Sandy Point Peninsula, which is located in the northwest corner
8 of the Lummi Indian Reservation. The United States on behalf of the
9 Lummi Nation also claims a prior and paramount right to surface
10 water as necessary to fulfill the homeland purposes of the Lummi
11 Indian Reservation. This action is limited to a determination of
12 the Lummi Nation's right to groundwater underlying the Lummi
13 Peninsula.

14 II. Jurisdiction and Venue

15 2. Jurisdiction is conferred by 28 U.S.C. § 1345.
16 Relief may be awarded pursuant to 28 U.S.C. §§ 2201 and 2202. This
17 Court has venue of this action because the subject land and water
18 are located in the County of Whatcom which falls within the venue
19 of the Western District of Washington under 28 U.S.C. 128(b) and
20 1391(b)(2).

21 III. Description of the Issue

22 3. The Lummi Indian Reservation was established by the
23 1855 Treaty of Point Elliott, 12 Stat. 927, from lands on which the
24 Lummi Indians resided since time immemorial. Article II of the
25 Treaty "reserved for the present use and occupation" the land
26 comprising the Reservation and its resources for the use of the
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1 Lummi Nation. 12 Stat. 927, 928. The Treaty also impliedly
2 reserved to the Lummi Nation and its members the right to water
3 sufficient to accomplish the homeland purposes of the Reservation.
4 Defendants' development within the Reservation has adversely
5 affected the quantity and quality of groundwater underlying the
6 Lummi Peninsula portion of the Reservation. This suit seeks to
7 determine and protect the Lummi Nation's right to the groundwater
8 that underlies the Lummi Peninsula.

9 IV. Parties

10 4. Plaintiff United States in its own right and for
11 the benefit of the Lummi Nation and its members, brings this action
12 to protect the rights of the Lummi Nation and its members to the
13 groundwater reserved in and by the Treaty of Point Elliott, supra.

14 5. The Georgia Manor Water Association, the Gooseberry
15 Point Community and Water Association, the Leeward-Northgate Water
16 Association, and the Bel Bay Community and Water Association are
17 non-profit corporations organized under the laws of Washington
18 State. The Sunset Water Association is an unincorporated
19 association. (The Georgia Manor Water Association, the Gooseberry
20 Point Community and Water Association, the Leeward-Northgate Water
21 Association, the Bel Bay Community and Water Association, and the
22 Sunset Water Association will hereafter collectively be referred to
23 as "Water Associations"). These Water Associations deliver water
24 to their respective members and their assigns and are named
25 defendants as each holds permits under the claimed authority of
26 Washington State authorizing the withdrawal and delivery of

1 groundwater underlying the Lummi Peninsula. The priority dates of
2 the permits issued to these Water Associations are junior to the
3 treaty-protected water rights of the Lummi Nation and its members.

4 6. The State of Washington claims ownership of the
5 rights to the use of the waters underlying the Lummi Peninsula both
6 in its sovereign capacity and as trustee for all individual persons
7 within the State of Washington claiming an interest in those waters.
8 The State of Washington's Department of Ecology regulates the
9 natural resources of the State of Washington and by statute (Wash.
10 Rev. Code §90-44) has issued permits to certain Defendants claiming
11 to authorize the withdrawal of water underlying the Lummi Peninsula.

12 7. The named individual defendants (hereinafter
13 referred to as "Pumper Defendants") are pumpers of groundwater
14 underlying the Lummi Peninsula and the majority of which are not
15 members of the Defendant Water Associations.

16 V. Facts

17 8. In 1855, the United States and the Lummi Nation, by
18 Treaty of Point Elliott, 12 Stat. 927, carved out the Lummi Indian
19 Reservation from within the broad territory that the Lummi Indians
20 had used and occupied since time immemorial. The Treaty of Point
21 Elliott set aside the land and resources of the Reservation for the
22 benefit of the Lummi Nation and its members.

23 9. The Lummi Indian Reservation is essentially located
24 along the coast of Washington State on the northern-most part of
25 Puget Sound and the southern-most part of the Georgia Straits. The
26 Lummi Peninsula is bounded by Bellingham Bay and Lummi Bay, both
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1 salt water bodies. The Lummi Peninsula was an island at the time
2 of the 1855 Treaty of Point Elliott, supra.

3 10. The subject of this suit is the groundwater
4 underlying the Lummi Peninsula, which is not connected with fresh
5 groundwater sources outside the Lummi Peninsula.

6 11. The Lummi Peninsula groundwater source is completely
7 contained within the boundary of the Lummi Indian Reservation and
8 all recharge to that source is solely from infiltration of
9 precipitation falling on that peninsula's surface.

10 12. Defendant Water Associations and Pumper Defendants
11 own fee land within the Lummi Indian Reservation and pump and use
12 the Lummi Peninsula's groundwater resource for domestic and/or
13 commercial purposes.

14 13. The Defendant State of Washington, through its
15 Department of Ecology, has issued permits for the withdrawal of
16 groundwater underlying the Lummi Peninsula. There are also wells
17 on the Lummi Peninsula owned and operated by certain Pumper
18 Defendants for which no permits have been issued.

19 14. The Lummi Nation and its members have developed and
20 established a portion of their homeland on the Lummi Peninsula,
21 including permanent communities, schools, government offices, and
22 commercial enterprises. The Lummi Nation and its members rely on
23 the Lummi Peninsula's groundwater resource to satisfy domestic,
24 commercial, and other homeland purposes.

25 15. Groundwater underlying the Lummi Peninsula is in
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1 limited supply and is needed to satisfy the present and future needs
2 of the Lummi Nation and its members. The Defendant Water
3 Associations and Pumper Defendants withdrawal and use of the
4 groundwater underlying the Lummi Peninsula adversely affects the
5 ability of the Nation and its members to exercise its treaty-
6 protected right to the withdrawal and use of that groundwater.

7 16. The groundwater underlying the Lummi Peninsula is
8 the sole source of fresh water within the Lummi Peninsula and has
9 experienced salt water intrusion as a result of excessive pumping.
10 Salt water intrusion can be controlled by regulation of pumping
11 rate, well location, and well depth.

12 17. The only potable surface water used on the Lummi
13 Peninsula is treated water purchased from the City of Bellingham and
14 piped to the reservation.

15 18. Defendant Water Associations' and the Pumper
16 Defendants' use of limited groundwater is increasing. Additional
17 withdrawals will increase existing salt water intrusion.

18 19. The groundwater resource underlying the Lummi
19 Peninsula has experienced salt water intrusion to the point of
20 forcing the Lummi Nation to discontinue the use of a community well
21 and restricting the use of other individual and community wells.

22 COUNT I

23 CLAIM AGAINST LUMMI PENINSULA GROUNDWATER USERS

24 20. The United States repeats and realleges and
25 incorporates by reference herein the allegations in paragraphs 1
26 through 19.

1 21. The 1855 Treaty of Point Elliott, 12 Stat. 927,
2 reserved for the Lummi Nation the land comprising the Reservation
3 and its resources. The treaty also impliedly reserved to the Lummi
4 Nation and its members the right to water sufficient to accomplish
5 the homeland purposes of the Lummi Indian Reservation. Winters v.
6 United States, 207 U.S. 564 (1908), Arizona v. California, 373 U.S.
7 546 (1963). The implied reservation of the right to water applies
8 to groundwater as well as surface water. Cappaert v. United States,
9 426 U.S. 128 (1976), Tweedy v. Texas Co., 286 F. Supp. 383, 385 (D.
10 Mont. 1986), Gila River Pima-Maricopa Indian Community v. United
11 States, 9 Cl. Ct. 660, 699 (1986), In Re The General Adjudication
12 of All Rights to Use Water in the Gila River System and Source, 1999
13 WL 1045034 (Ariz), November 19, 1999.

14 22. The Defendant Water Associations and the Pumper
15 Defendants pump water from the groundwater underlying the Lummi
16 Peninsula.

17 23. Withdrawal of groundwater by the Defendant Water
18 Associations and the Pumper Defendants from the Lummi Peninsula
19 groundwater infringes upon the ability of Lummi Nation and its
20 members to effectively exercise the treaty-protected right to that
21 groundwater thereby causing and continuing to cause injury to the
22 Lummi Nation and its members.

23 24. The groundwater underlying the Lummi Peninsula
24 continues to experience salt water intrusion. Salt water intrusion
25 to the Lummi Peninsula groundwater infringes upon the ability of
26 Lummi Nation and its members to exercise effectively the treaty-

1 protected right to that groundwater thereby causing and continuing
2 to cause injury to the Lummi Nation and its members.

3 COUNT II

4 CLAIM AGAINST WASHINGTON STATE

5 25. The United States repeats and realleges and
6 incorporates by reference herein the allegations in paragraphs 1
7 through 19 and 21 through 24.

8 26. The Defendant State of Washington asserts an
9 ownership interest in the subject waters and issues permits to the
10 Defendant Water Associations and certain Pumper Defendants
11 purporting to authorize the withdrawal of groundwater underlying the
12 Lummi Peninsula thereby causing the Lummi Nation and its members to
13 suffer irreparable damage for which no adequate remedy at law
14 exists.

15 WHEREFORE, the United States prays and demands an order
16 from this Court that:

17 (1) declares that the Treaty of Point Elliott, 12 Stat.
18 927, reserved the Reservation land and its resources for the benefit
19 of the Lummi Nation and its members and impliedly reserved to the
20 Lummi Nation and its members the right to the groundwater underlying
21 the Lummi Peninsula sufficient to foster, promote, and fulfill the
22 purposes for which the lands of the Reservation were set aside for
23 the Lummi Nation and its members and further declares that the
24 priority date of the groundwater reserved is at least time
25 immemorial but no later than the date of the Treaty of Point
26 Elliott.

(2) quantifies the Lummi Nation's right to groundwater underlying the Lummi Peninsula necessary to satisfy the homeland purposes of the Lummi Indian Reservation;

(3) enjoins the Defendant Water Associations and their assigns and the Pumper Defendants and their assigns from withdrawing groundwater underlying the Lummi Peninsula in conflict with the rights of the Lummi Nation and its members as declared and decreed by this Court;

(4) enjoins the State of Washington from claiming an ownership interest in and regulating the waters underlying the Lummi Peninsula decreed by this Court to be reserved for the Lummi Nation and its members by the Treaty of Point Elliott;

(5) awards such other and further relief as may be deemed just and proper;

(6) retains this Court's jurisdiction for purposes of enforcement of its decree.

Respectfully submitted this 10th day of JANUARY, 2001.

KATRINA C. PFLAUMER
United States Attorney

BRIAN KIPNIS
CHARLES E. O'CONNELL, JR.
Attorneys for Plaintiff the United States